REMARKS

Claims 1-18 are currently pending in the subject application and are presently under consideration. Applicants note with appreciation the allowance of claims 9-10 and 15-16 and the finding of allowable subject matter in claims 13, 14, 17, and 18 if rewritten into independent form.

Claims 4, 5, 11, 12, and 18 have been amended herein. A clean version of all pending claims is found at pages 2-5. A marked-up version of claim amendments made herein can be found on page 10 of this Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 4, 5, 11, 12, and 18 Under 35 U.S.C. §112, second paragraph

Claims 4, 5, 11, and 12 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, claims 4 and 11 are rejected for the term "pre-determined" being indefinite. Claims 4 and 11 have been amended herein to resolve the rejection. Claims 5, 12, and 18 are rejected for the phrase "wherein the etch chemistry is highly selective to the patterned negative tone photoresist layer and to the at least one insulative layer over the second patterned photoresist layer" being indefinite. Claims 5, 12, and 18 have been amended to resolve the rejection. In view of the foregoing, the rejection should be withdrawn.

II. Rejection of Claims 1, 4, 5, 6, 7, and 8 Under 35 U.S.C. §102(b)

Claims 1, 4, 5, 6, 7, and 8 are rejected under 35 U.S.C. §102(b) as being anticipated by Dai (US 5,877,076). It is respectfully submitted that this rejection be withdrawn for at least the following reasons.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *In re Robertson*, 169 F.3d 743, 745, 49

USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

The Examiner contends that Dai teaches a method that includes "etching the at least one insulative layer through the first patterned photoresist layer and the second patterned photoresist layer simultaneously in the single etch process (col. 7, lines 14-16)" as is claimed in the present invention. Applicants respectfully disagree.

With respect to the rejected claims in the present invention, the claimed method involves depositing a first photoresist layer over the at least one insulative layer; **patterning a first image into the first photoresist layer;** curing the first patterned photoresist layer; depositing a second photoresist layer over the first patterned photoresist layer; **patterning a second image into the second photoresist layer**; and etching the at least one insulative layer **through the first patterned photoresist layer and the second patterned photoresist layer simultaneously in the single etch process.**

Contrary to the present invention, Dai does not teach etching the top oxide layer 140 to form the first (hole pattern 151) and second image (line pattern 161) simultaneously in a single etch process. For example, Dai states:

> Using the hole pattern (151) in N-type layer of photoresist (150) as a mask, top oxide layer (140) is next etched to transfer the hole pattern as shown in FIG. 3g. It is preferred that the recipe used for dry etching the oxide layer in a HDP oxide etcher comprises gases Ar, CHF_3 and C_4F_8 at a flow rate... The recipe is next changed to a recipe comprising Ar, CHF_3 and CF_4 at a flow rate ... in order to etch the SiN layer (170) ...
>
> Line pattern (161) in photoresist layer (160) is next extended down to the top of oxide layer (140) with a blanket resist dry etch recipe... (col. 7, ll. 14-32).

Hence, etching the top oxide layer to form the hole pattern 151 and the line pattern 161 in the top oxide layer is not simultaneous in a single etch process in Dai, as described and claimed in the present invention. Furthermore, etching the tri-layer dielectric (140, 130, 120) to form both images does not occur simultaneously in a single etch process in Dai.

In view of the foregoing, the rejection should be withdrawn.

III. **Rejection of Claims 2 and 3 Under 35 U.S.C. §103(a)**

Claims 2 and 3 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dai ('075) as applied to claim 1 above, and further in view of Chang (US 4,165,395). It is respectfully submitted that this rejection be withdrawn for at least the following reasons.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP §706.02(j).

Since, claims 2 and 3 depend from claim 1, Applicants' arguments expressed with respect to claim 1 also apply to claims 2 and 3. In addition to the discussion set forth above, Chang fails to cure the aforementioned deficiencies of Dai. More specifically, Chang does not teach or suggest forming a first image (patterned in a first photoresist) and a second image (patterned in a second photoresist) simultaneously in an insulating layer in a single etch process as described in the present invention.

In view of the foregoing, the rejection should be withdrawn.

IV. Conclusion

The present application is believed to be condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

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MARKED UP VERSION OF AMENDED CLAIMS

Please amend claims 4, 5, 11, 12, and 18 as indicated below:

4. (Amended) The method of claim 1, wherein etching the at least one insulative layer through the first patterned photoresist layer and the second patterned photoresist layer further comprises employing an etch chemistry that ablates [a pre-determined] an amount of the first patterned photoresist layer during the etching process without substantially affecting the second patterned photoresist layer.

5. (Amended) The method of claim 4, wherein the etch chemistry is highly selective to the first patterned photoresist layer and to the at least one insulative layer [over] than to the second patterned photoresist layer.

11. (Amended) The method of claim 9, wherein etching the at least one insulative layer through the first patterned photoresist layer and the second patterned photoresist layer further comprises employing an etch chemistry that ablates [a pre-determined] an amount of the first patterned photoresist layer during the etching process without substantially affecting the second patterned photoresist layer.

12. (Amended) The method of claim 11, wherein the etch chemistry is highly selective to the first patterned photoresist layer and to the at least one insulative layer [over] than to the second patterned photoresist layer.

18. (Amended) The method of claim 17, wherein the etch chemistry is highly selective to the patterned negative tone photoresist layer and to the at least one insulative layer [over] than to the second patterned photoresist layer.